UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

AIRCO INDUSTRIAL CONTRACTORS, INC.

Employer

and **Case 10-RC-15443**

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO, LOCAL 545

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER DISMISSING PETITION

The Employer, Airco Industrial Contractors, Inc., is a Georgia corporation with an office and place of business located in Garden City, Georgia, where it is engaged in the business of industrial maintenance. The Petitioner, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, Local 545 ("Boilermakers Union"), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all journeymen boilermakers, apprentices, and other applicable classifications employed in the boilermaker trade by signatory contract, including, but not limited to, boilermaking, welding, acetylene burning, riveting, chipping, caulking, rigging, fitting up, grinding, reaming, impact machine operating, offloading, and handling of boilermaker material and equipment, and such other work as comes under the trade jurisdiction of the boilermakers, excluding all guards, office clericals, supervisors, and all other employees. A

hearing officer of the Board held a hearing and both parties filed briefs, which were duly considered.

The sole issue in this case is the whether the petitioned-for unit still exists. The Employer takes the position that the petitioned-for unit is inappropriate because the Employer no longer employs boilermakers or engages in significant boilermaker work. The Petitioner disputes the Employer's account of its current operations and urges that the petitioned-for unit still exists because, despite the absence of current boilermaker employees, there exists previously employed boilermakers who would be eligible to vote under the Steiny & Co., 308 NLRB 1323 and Daniel Construction Co., 133 NLRB 264 formulae.

I have considered the evidence and arguments presented by the parties on this issue. As discussed below, I have concluded that the Employer has ceased to bid for and perform significant boiler-related work; that the boiler-related work in which it continues to engage is minor and is carried out by employees in other union-represented crafts covered by existing collective bargaining agreements; and that the Employer no longer employs employees in the petitioned-for unit.

I. THE EMPLOYER'S OPERATIONS

The Employer is engaged in industrial maintenance. It operates a "wall-to-wall" union shop with employees currently employed and represented by the Plumbers & Pipefitters Union, the Iron Workers Union, and the Carpenters Union. Under the terms of the currently effective Section 8(f) agreements with these Unions, the Employer obtains employees on an as-needed, project-by-project basis from the Unions' hiring halls.

Prior to July 2003, the Employer was also party to an 8(f) agreement with the petitioning Boilermakers Union. In May 2003, the Employer timely notified the Boilermakers Union that it would terminate the collective bargaining agreement upon its expiration in July 2003. During

the life of the contract, the Employer performed precipitator repairs, precipitator overhauls, major tube replacements, complete pre-heater basket replacements, and boiler and pressure vessel rebuilds for public utility companies using boilermaker employees. The Employer staffed these jobs with referrals from the Boilermakers' hiring hall. These employees were laid off at project's end.

In the 13 months prior to the termination of the contract, the Employer performed 14,787 man-hours of boilermaker work, representing just over 10% of the total man-hours worked by all crafts during that period. This boilermaker work primarily comprised large jobs, such as major tube repairs requiring 2000-4000 man-hours. The Employer's last major boilermaker job required 8000 man-hours of work. Because the Boilermakers Union could not supply sufficient labor to complete the job, the Employer performed about half the work using pipefitters and ironworkers. Apparently, the Employer has employed no boilermakers since the expiration of the collective bargaining agreement on July 31, 2003.

The Employer has never held the licensing, called an R-Stamp, required to bid for and perform major repairs or alterations of boilers and pressure vessels for private companies. However, no such licensing is required for boiler-related work for public utilities. After the Boilermaker collective bargaining agreement was terminated in July 2003, the Employer notified Savannah Electric and Power, its major public utility customer, that it would no longer bid for large-scale boilermaker work such as major tube replacement, major pre-heater basket replacement, precipitator rebuilds, or boiler or pressure work.

Since July 2003, the Employer has not bid for public utility pressure vessel work. Nor has the Employer bid for or performed precipitator or rebuild work during this period. The Employer has performed some small boilermaker jobs, such as minor tube repairs involving approximately 60 man-hours of work and installing ductwork. These small jobs typically have

been emergency jobs for customers and have been carried out by employees from other crafts, such as ironworkers, pipefitters, carpenters, and millwrights.

While the Union introduced evidence that the Employer attended a pre-bid meeting in December 2003 for a job involving boiler components, the Employer countered, without contradiction, that attendance at a pre-bid conference does not signify that the Employer submitted a bid on such project, and it did not, in fact, bid. The Employer rejects any boiler-related work, even emergency repairs, that it considers "too major." The Employer also noted that it may attend a pre-bid meeting when a customer requests the Employer to provide budget pricing on jobs whether or not the Employer intends to bid those jobs.

II. ANALYSIS AND CONCLUSIONS

The preponderance of the record evidence establishes that the Employer ceased bidding on and performing major boiler-related work in July 2003. Its last large-scale boiler work was completed in May 2003. Since then, the Employer has performed occasional minor boiler-related work, generally on an emergency basis for established customers. The Employer has employed pipefitters, ironworkers, and other tradesmen to perform this work as needed. The Employer has employed no employees classified in the petitioned-for unit since July 2003 and has undisputedly integrated its reduced boilermaker work into the work of its other craft unions. The fact that former boilermakers may retain voter eligibility under the Steiny/Daniel formulae, supra, does not make said employees an appropriate unit in and among themselves where no boilermakers are currently employed or will be employed given the changed circumstances of the Employer's operations.

In this regard, I find the Petitioner's reliance on Fish Plant Services, 311 NLRB 1294 (1993) to be inapposite. In that case, the union sought to represent a unit of all construction employees employed by the employer in a certain geographic region. At the time of the hearing,

the employer was engaged in one project employing 82 employees in various trades. The employer had submitted bids for three additional jobs. The Board determined that an election was appropriate because of the employer's substantial prior work, its outstanding bids for additional work, and its ongoing project, which was expected to last beyond the date of an election. In the instant case, though the Employer has engaged in prior boilermaker work, its last substantial boiler-related project ended prior to July 2003. Moreover, the Employer has no outstanding bids for boilermaker work and has no boilermakers currently employed.

Based upon the foregoing facts and circumstances, I hereby conclude that it would serve no useful purpose to conduct an election at this time. See, generally, Davey McKee Corporation, 308 NLRB 839 (1992) (evidence established that employer not likely to continue to perform construction work on other projects employing petitioned-for unit employees). I shall, therefore, dismiss the petition in this matter.

III. CONCLUSIONS AND FINDINGS

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[1]

3. The labor organization involved claims to represent certain employees of the Employer.

[1] The parties stipulated that during the past twelve months, a representative period, the Employer purchased and received goods and materials at its Garden City, Georgia facility valued in excess of $50,000 directly from suppliers located outside the State of Georgia.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The petitioned-for unit does not constitute a unit appropriate for the purposes of the collective bargaining within the meaning of Section 9(c) of the Act.

IV. ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

V. RIGHT TO REQUEST REVIEW

Under provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, NW, Washington, DC 20570.

The Board in Washington, DC must receive this request for review by 5:00 p.m. EST on April 14, 2004.

Dated at Atlanta, Georgia, this 31st day of March 2004.

/s/ Martin M. Arlook

Martin M. Arlook, Regional Director
National Labor Relations Board
233 Peachtree Street, NE
1000 Harris Tower, Peachtree Center
Atlanta, Georgia 30303

393-6034-0100